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PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	BARSTOW, David et al.
Appl'n No.:	09/548,719
Filing Date:	April 13, 2000
For:	METHOD AND APPARATUS FOR BROADCASTING LIVE EVENTS TO ANOTHER LOCATION AND PRODUCING A COMPUTER SIMULATION OF THE EVENTS AT THAT LOCATION

Group Art Unit: 2178

Examiner: PAULA, C

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MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Applicants submit this reply brief in response to the Examiner's answer mailed August 26, 2003. Claims 1-16 remain pending, all of which stand finally rejected.

THE DOUBLE PATENTING REJECTION HAS BEEN OVERCOME

Applicants thank the Examiner for replacing the previously asserted statutory type double patenting rejection with the more proper non-statutory obviousness-type double patenting rejection. Although Applicants do not acquiesce in the Examiner's characterization of the conflicting claims, in an effort to expedite prosecution Applicants nonetheless, in a separate but concurrent filing, submit a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to obviate this rejection as permitted[1] by the Examiner.

Accordingly, Applicants respectfully request that the submitted terminal disclaimer be entered, and that the double patenting rejection be withdrawn from appeal.

[1] See Examiner's answer, p. 3, lns 17-20 and p. 7, lns 4-7.

RESPONSE TO THE EXAMINER'S ARGUMENTS

Applicants maintain their original arguments as presented in the appeal brief. The following specific points are in response to supplemental arguments provided by the Examiner in the Examiner's answer.

McCarthy Does Not Represent Actions Involving Physical *Exertion and Skill*

In the Examiner's answer, the Examiner maintains that McCarthy discloses an action type selected from a set of action types representative of *actions involving physical exertion and skill*, as claimed. For support, the Examiner states that the effort and skill it takes for a video game character to run or collide with another video game character is physical exertion and skill.[2]

The Examiner's position cannot be sustained for the simple reason that actions of *virtual* video game characters do not involve *physical* exertion and skill. As explained in the appeal brief,[3] there is nothing physical about anything portrayed by a virtual character in a video game.

Further, the Examiner applies Hughes in combination with McCarthy to teach a *live event* involving physical action and skill.[4] Applicants respectfully traverse this combination of Hughes and McCarthy for the reasons specified in the appeal brief and below.

Hughes Does Not Simulate a Live Event

In the Examiner's answer, the Examiner continues to demonstrate a material misunderstanding of Hughes by explicitly asserting that Hughes "teaches computer games simulating real life football games."[5] This characterization is in error, as it misrepresents Hughes and creates a misleading basis for the asserted combination with McCarthy.

[2] *Id.* at 7, lns 13-16.

[3] Appeal brief, p. 8, lns 1-12.

[4] Examiner's answer, p. 8, lns 1-12.

[5] *Id.* at 8, lns 16-17 (citation omitted).

To support this characterization, the Examiner states that "Hughes teaches a game in which a live event - "football game" - is simulated using some of the statistics of the game, such as rosters of actual football players, drafting, trading of actual football players, etc statistics [sic].[6] Foremost, this statement erroneously characterizes actual player rosters, drafting and trading as statistics of a live football game; clearly, the formation of player rosters, drafting and trading are activities that occur *outside* of a live football game. Further, nothing in Hughes teaches or suggests the simulation of a live football game using statistics from the game itself; rather, as explained in the appeal brief,[7] Hughes implements a computer-implemented Fantasy Football league that performs a Fantasy Football calculation (i.e., weekly point value) based on statistical data (i.e., actual NFL player performances) compiled across several unrelated live events (i.e., actual NFL games).

Moreover, the Examiner appears to appreciate that reading Hughes as a computer-implementation of a Fantasy Football league, as set forth by Applicants, would be fatal to the Examiner's rejections. For this reason, the Examiner states that "Hughes does not teach a 'Fantasy Football' simulation"[8] and that "Hughes teaches against 'Fantasy Football.'"[9]

[6] *Id.* at 10, lns 1-3 (citation omitted).

[7] Appeal brief, p. 8, ln 13 - p. 9, ln 17.

[8] Examiner's answer, p. 9, lns 5-6.

[9] *Id.* at 9, ln 7.

To support the Examiner's position that Hughes does not teach a Fantasy Football simulation, the Examiner states that "[t]he prior art teaches a 'Fantasy Football' game (col. 1, lines 25-42)"[10] with the insinuation that this fact alone establishes that Hughes does not teach a Fantasy Football implementation. To the contrary, the portion of the Hughes background section cited by the Examiner for support discusses the drawbacks of the *manual administration* of a Fantasy Football league. This directly supports the reality that Hughes is directed to a *computer-implemented* Fantasy Football league that would not "require a substantial *personal* effort in order to make the game work."[11]

Additionally, to support the Examiner's position that Hughes teaches *against* Fantasy Football, the Examiner states that "Hughes discloses the simulation of a live football game which is as realistic as possible"[12] by employing "actual live football game statistics (col.2, lines 9-64, col. 16, lines 3-37)."[13] Not only is there no teaching or suggestion in Hughes of simulating a live football game to any degree of realism, but the employing of actual live football game statistics in Hughes is solely for Fantasy Football purposes, as explained in the appeal brief.[14]

Thus, Applicants respectfully maintain that Hughes does not simulate a live event, and even if McCarthy were somehow modified with teaching from Hughes, the resulting combination would still not simulate a live event.

Hughes and McCarthy Are Not Combinable

The Examiner has provided no evidence as to how Hughes is combinable with McCarthy. In the Examiner's answer, the Examiner merely states that:

[10] *Id.* at 9, lns 6-7.

[11] Hughes, col. 2, lines 11-14 (emphasis added).

[12] Examiner's answer, p. 9, lns 7-8.

[13] *Id.* at 9, ln 9.

[14] Appeal brief, p. 8, ln 13 - p. 9, ln 17.

> the combination of the references would not render McCarthy unsatisfactory, because Hughes teaches above the simulation of an easy to use football game based on actual performances, so this provides the advantage of making the game more realistic, and this would also provide users with the benefit of simulating the conflict, and competition which takes place on a live event such as football, baseball, boxing, etc.[15]

This statement merely sets forth general advantages (e.g., "making the game more *realistic*") without providing support for what such an underlying combination would look like. In the appeal brief,[16] Applicants explained with support that McCarthy could not be modified in view of Hughes for the simple reason that there is no movement or collision of objects that could be rendered based on an implementation of a Fantasy Football league. Thus, there is nothing in the menu-driven screens of Hughes that could make McCarthy more *realistic*. Additionally, the Examiner does not provide an explanation for how a live event may be both simulated but also altered by a user playing the "game" through this combination.

The Examiner has also not provided support in the answer as to how McCarthy is combinable with Hughes. The Examiner merely states that "the teaching of Hughes would provide the benefit of allowing users playing the game taught by McCarthy, to have the best possible roster of players [and s]o that Hughes would provide a user the benefit of assembling the best players before the video game starts."[17] Foremost, through this statement the Examiner basically concedes that the contribution of Hughes to this combination is not the simulation of a live event, as previously asserted, but rather the assembling of a player roster before a game starts, which is based on a Fantasy Football implementation. As explained above, the formation of player rosters is an activity that occurs *outside* of a live football game.

Moreover, in the appeal brief[18] Applicants explained with support that an individual Hughes Fantasy Football "game" could not be rendered by the McCarthy video processor

[15] Examiner's answer, p. 11, lns 1-5.

[16] Appeal brief, p. 11, ln 25 - p. 12, ln 9.

[17] Examiner's answer, p. 11, lns 11-14.

[18] Appeal brief, p. 12, lns 10-22.

because the statistical calculations representing the point value of a Fantasy Football team cannot be suitably modeled by a virtual game and playfield involving movement and collision of objects (e.g., football players).

CONCLUSION

Applicants respectfully request withdrawal of the rejections of the pending claims. Issuance of a Notice of Allowance is earnestly solicited.

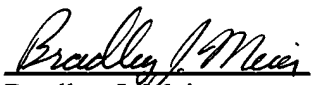
Although not believed necessary, the Office is hereby authorized to charge any fees required under 37 C.F.R. § 1.16 or § 1.17 or credit any overpayments to Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter regarding this application.

Respectfully submitted,

KENYON & KENYON

Dated: October 27, 2003

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